

January 20, 1999

Commissioner Michael K. Powell  
Federal Communications Commission  
The Portals  
Eighth Floor  
445 Twelfth St., S.W.  
Washington, D.C. 20554

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**Re: CC Docket No. 98-147 – Deployment of Wireline Service Offering Advanced  
Telecommunications Capability**

Dear Commissioner Powell:

Enclosed for your consideration are materials distributed by the Telecommunications Resellers Association ("TRA") at meetings conducted with other Commissioners, as well as the Common Carrier Bureau, addressing the Commission's proposals to relieve any incumbent local exchange carrier which elects to offer advanced telecommunications services through a separate affiliate of its statutory resale and network unbundling obligations as they relate to such services. As set forth in the attached materials, TRA vigorously opposes these proposals on both legal and policy grounds. As stated therein, TRA believes that the Commission has proposed to do that which it legally cannot do, that which, for compelling public policy reasons, it should not do, and that, which as a practical matter, it need not do, all to the detriment of small competitive carriers. The Commission's unlawful and unnecessary proposals will effectively deny small carriers meaningful access to advanced telecommunications services, severely hindering in so doing their ability to compete not only in the local exchange, but the long distance, market, all to prompt the rollout of services whose deployment is already being driven by market forces. TRA, accordingly, strongly urges you to vote against relieving incumbent local exchange carriers of their obligations to make available advanced telecommunications services at wholesale rates and in component network elements, helping in so doing to preserve the most dynamic segment of the telecommunications industry.

Sincerely yours,



Charles C. Hunter  
General Counsel  
Telecommunications Resellers Association

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cc: Kyle D. Dixon

1620 I Street, N.W.  
Suite 701  
Washington, D.C. 20006  
Telephone (202) 293-2500  
Facsimile (202) 293-2571

# **TELECOMMUNICATIONS RESELLERS ASSOCIATION**

**CC DOCKET No. 98-147**

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**Deployment of Wireline Service Offering  
Advanced Telecommunications Capability**

**Ex Parte Presentation**

**January, 1999**

# **TELECOMMUNICATIONS RESELLERS ASSOCIATION**

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### **The Telecommunications Resellers Associations and Its Members:**

- √ The largest association of competitive providers of telecommunications services
- √ Neary 800 entities engaged in, or providing products and services in support of, telecommunications resale
- √ Providing long distance, local exchange, international, wireless, Internet, enhanced and other services
- √ Roughly a third of TRA's carrier members are currently providing local exchange service, primarily through full service resale
- √ Small to mid-sized carriers serving primarily small business and residential customers
- √ "Switchless" and switched- and facilities-based providers

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In the *Notice of Proposed Rulemaking*, the Commission has proposed to do that which it legally cannot do, that which, for compelling public policy reasons, it should not do, and that, which as a practical matter, it need not do, all to the detriment of small competitive carriers.

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### **The Impact of the Commission's Proposal on Small Providers and Resale Carriers will be Devastating**

- √ Small providers lack the financial wherewithal to collocate extensively
- √ Carriers' carriers are not likely to emerge due to financial and competitive constraints
- √ Incumbent LECs will not voluntarily make high-speed, switched broadband services available at wholesale rates for resale
- √ Small providers will not be able to offer digital subscriber line and other advanced telecommunications services

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### **The Impact of the Commission's Proposal on Small Providers and Resale Carriers will be Devastating (cont.)**

- √ xDSL services will substitute for POTS among key market segments
- √ United States Telephone Association study reports that 10 to 11% of households will subscribe to xDSL service by year-end 2001
- √ Small providers and resale carriers will be competitively walled off from small business and residential customers who desire advanced telecommunications services
- √ Competitive losses will bleed over to the long distance, international, wireless, and enhanced services markets as customers increasingly come to expect bundled service offerings and integrated billing

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"Vigorous competition would be impeded by technical disadvantages and other handicaps that prevent a new market entrant from offering services that consumers perceive to be equal in quality to the offerings of the incumbent LECs. . . The elimination of these obstacles is essential if there is to be a fair opportunity to compete in the local exchange and exchange access markets."

Local Competition Order at ¶¶ 16, 18

The bulk of access lines served by competitive LECs are resold lines.

U.S. Department of Justice

"[R]esale is the key to bringing immediate choice to residential customers."

William E. Kennard

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### Market Forces will not Generate an Active Wholesale Market

- √ Monopolists – i.e., incumbent LECs and CATV providers -- will not voluntarily supply competitors with wholesale offerings
- √ Collocation is cost-prohibitive for most carriers
  - per line costs of \$1,000 and up
  - per central office costs in the hundreds of thousands
- √ As a result, the advanced telecommunications services market will be populated by relatively few providers concentrated in large population centers
- √ Oligopoly will replace monopoly and consumers will be denied the benefits of dynamic price and service competition



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### **Resale/Network Unbundling Requirements Need Not be Abandoned to Prompt Deployment of Advanced Telecommunications Capability**

"The cable industry is in the midst of a transformation from self-contained, coaxial distribution systems that feature one-way delivery of analog television signals to two-way, interactive broadband systems involving a hybrid of traditional coaxial and modern fiber optic technologies . . . enabl[ing] the industry to deliver a wide range of telecommunications and information services – including Internet access, telephony, and digital television."

Internet Over Cable: Defining the Future in Terms of the Past, p. 75

"After their long sleep, the RBOCs are waking up to the value of digital subscriber line (DSL) technology just as the cable industry has begun rollouts of their high-speed modems."

"Since cable modems are rolling, and, unopposed, will ultimately offer not only high-speed data but voice telephony as well (both Internet voice and circuit switched), the BOCs are certainly damned if they don' deploy xDSL."

Industry Analyst ( Sanford C. Bernstein & Co., Inc.)

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### Resale/Network Unbundling Requirements Need Not be Abandoned to Prompt Deployment of Advanced Telecommunications Capability (cont.)

- ✓ Driven by existing market forces, the BOCs and other large incumbent LECs are deploying xDSL services as mass market offerings
- ✓ Ameritech, Bell Atlantic, BellSouth, GTE, SBC, and US WEST will be providing xDSL services in markets throughout their regions by year-end 1999
- ✓ Cable modem service is providing the competitive impetus (e.g., Bell Atlantic is targeting promotions to cable modem service subscribers)
- ✓ The BOCs have a history of trading promised innovation for regulatory relief, and failing to deliver – e.g., videotex and video dialtone
- ✓ The Telecommunications Act of 1996 provides its own mechanisms for relief from the Section 251(c) network unbundling and resale obligations, as well as the Section 271 prohibition against BOC provision of in-region, interLATA service

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### **The Commission Cannot Lawfully Relieve Incumbent LECs of Their Statutory Resale and Network Unbundling Obligations**

- √ The Commission cannot do indirectly that which it is prohibited from doing directly
  - Section 10 precludes forbearance from application of Sections 251(c) and 271 prior to full implementation
  - Forbearance by any other name is still forbearance
- √ An Incumbent LEC affiliate is a "successor or assign" of, or a carrier "comparable to," an incumbent LEC when the affiliate "takes on an essential attribute of an ILEC"
  - As the sole provider of advanced telecommunications services, an incumbent LEC affiliate is (i) the assign of or successor to the incumbent LEC's right to provide such services, and (ii) assumes the mantle of the incumbent LEC as to these services
  - A customer desiring to obtain advanced telecommunications services from the incumbent LEC must do so through the incumbent LEC affiliate

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### **The Commission Cannot Lawfully Relieve Incumbent LECs of Their Statutory Resale and Network Unbundling Obligations**

- ✓ The Commission's proposal stands in direct conflict with two of the basic tenets of the telephony provisions of the Telecommunications Act of 1996
  - Congress has directed, and the Commission has committed to ensure, that resale provide a viable path of entry into the local market
  - Resale constitutes "an important entry strategy . . . for small businesses that cannot afford to compete in the local exchange market by purchasing unbundled network elements or by building their own networks"
  - Congress directed that there must be an incumbent LEC for every geographic location and service offering
  - All three entry paths into the local exchange market require the presence of an incumbent LEC
  - "Incumbent LEC" is defined broadly to ensure that there is an incumbent LEC for every geographic location and service offering

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### **Structural Separation Does Not Adequately Safeguard Against Anti-Competitive Abuses**

- √ Viable on paper and work in theory, but are seldom effective in practice
  - With respect to the BOCs and other large incumbent LECs, they will be defeated by the enormity and the complexity of the operations involved
  - Massive incentives to evade; myriad means of evasion; small likelihood of detection networks"
- √ Viable only if incentives to evade are removed
  - Separation of ownership a critical component
  - Additional safeguards required

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**Advanced Telecommunications Services Should be Made Available at Wholesale Rates for Resale Without Regard to Their Classification as Local Exchange or Exchange Access Services**

- √ Advanced telecommunications services are "telecommunications services"
- √ Telecommunications services offered at retail to non-carrier subscribers must be made available at wholesale rates for resale
- √ Advanced telecommunications services are generally offered to end-users and Internet access providers
- √ Internet access providers are providers of information services, rather than telecommunications carriers, and have long been treated as end-users for purposes of assessing access charges